

CONTRACT EXHIBIT 1, ATTACHMENT E

STO shall make partial payments as deliverables are submitted and accepted, according to the following schedule, subject to adjustment in accordance with the Contract:

| | | | | Scheduled |
|---------|--|------------|------------|-----------|
| Section | Deliverables | Start Date | Bill Date | Amount |
| Part 1 | Stage 1: Staff Transition | 02/03/2003 | 02/28/2003 | \$43,820 |
| | Transition of FIRN staff to Hayes facilities | | | |
| Part 1 | Stage 2: Transition of Circuits, Licenses and Hardware | | | |
| Part 1 | Stage 3: Dial-up Network & E-mail Services, and Web Solutions | | | |
| Part 1 | Stage 5: Quality Assurance Testing, Provisioning Benchmarks and Technical Provisioning | | | |
| Part 1 | Monthly Services to include: | 03/01/2003 | 03/31/2003 | \$43,820 |
| | Management of the existing network | | | |
| | Identification and disconnection of unused circuits | | | |
| | Re-deploy equipment | | | |
| | Assistance with property transfer | | | |
| | Assistance with DAN router interoperability | | | |
| | Dial-up services survey | | | |
| | Identify and cutback on dial-up services | | | |
| | Retrain support personnel | | | |
| | Email support | | | |
| | Email quality improvement | | | |
| | Transition of connections | | | |
| | Content filtering management | | | |
| | Management and oversight | | | |
| Part 1 | Monthly Services to include: | 04/01/2003 | 04/30/2003 | \$43,820 |
| | Management of the existing network | | | |
| | Identification and disconnection of unused circuits | | | |
| | Re-deploy equipment | | | |
| | Assistance with property transfer | | | |
| | Assistance with DAN router interoperability | | | |
| | Dial-up services survey | | | |
| | Identify and cutback on dial-up services | | | |
| | Retrain support personnel | | | |
| | Email support | | | |
| | Email quality improvement | | | |
| | Transition of connections | | | |
| | Content filtering management | | | |
| | Management and oversight | | | |
| Part 1 | Monthly Services to include: | 05/01/2003 | 05/30/2003 | \$43,820 |
| | Management of the existing network | | | |

| | | | | |
|--------|---|------------|------------|----------|
| | Identification and disconnection of unused circuits | | | |
| | Re-deploy equipment | | | |
| | Assistance with property transfer | | | |
| | Assistance with DAN router interoperability | | | |
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| | Retrain support personnel | | | |
| | Email support | | | |
| | Email quality improvement | | | |
| | Transition of connections | | | |
| | Content filtering management | | | |
| | Management and oversight | | | |
| | | | | |
| Part 1 | Monthly Services to include: | 06/01/2003 | 06/30/2003 | \$43,820 |
| | Management of the existing network | | | |
| | Identification and disconnection of unused circuits | | | |
| | Re-deploy equipment | | | |
| | Assistance with property transfer | | | |
| | Assistance with DAN router interoperability | | | |
| | Dial-up services survey | | | |
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| | Content filtering management | | | |
| | Management and oversight | | | |
| | | | | |

General Conditions

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3.01 Definitions:

"Contract" means the legally enforceable agreement, if any, that results from this solicitation. The parties to the Contract will be the State and the Contractor. The Contract shall be reduced to writing substantially in the form included in section 4.0 of the solicitation documents.

"Contract Administrator" means the STO employee who is primarily responsible for administration of the Contract. The Contract Administrator shall be identified in the contract, and the STO may appoint a different Contract Administrator, which shall not constitute an amendment to the Contract, by sending notice to the Contractor.

"Contract Manager" means the STO employee who is primarily responsible for the management of the Contract. The Contract Manager shall be identified in the Contract, and the STO may appoint a different Contract Manager, which shall not constitute an amendment to the Contract, by sending notice to the Contractor.

"Contractor" means a successful offeror, which, along with the STO, will enter into the Contract.

"DOE" means the Department of Education.

"Offeror" means the person submitting a reply to this solicitation.

"Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

"Purchase Order" means the form or format used to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, or other authorized means).

"Purchasing Director" means the person who is responsible for any communications relating to this solicitation. The Purchasing Director is identified in the Instructions to Offerors.

"Reply" means the offer extended to the State in response to this solicitation. The forms to accompany the reply are included in section 4.0 of these solicitation documents.

"STO" means the State of Florida, State Technology Office. The STO will be a party to the Contract. Following award, the STO shall be responsible for day-to-day administration of the Contract. The STO reserves the right to contract with a third-party service provider to assume responsibility for administration of the Contract.

"State" means the State of Florida and/or its agencies.

- 3.02 Product Version:** Purchase orders shall be deemed to reference a manufacturer's most recently released model or version of the product at the time of the order, unless the State specifically requests in writing an earlier model or version and the Contractor is willing to provide such model or version.
- 3.03 Best Pricing Offer:** During the Contract term, if the Contractor sells substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, at a lower price, then at the discretion of the State the price under the Contract shall be immediately reduced to the lower price.
- 3.04 Minority Business Utilization:** The STO and DOE support the fostering of continued economic growth and development for State of Florida Certified Minority businesses. The STO and DOE intends to seek out and consider Minority Business Enterprises and solicit their interest, capability and prices and encourages minority participation in contracting opportunities wherever possible. For more information on becoming a CMBE, please contact the Office of Supplier Diversity, Department of Management Services at (850) 487-0915.
- 3.05 Americans With Disabilities Act (ADA):** Contractor should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals. ADA compliance will be an important consideration for any procurement under this ITN.
- 3.06 Energy Star Compliant:** The Federal Environmental Protection Agency (EPA) encourages the manufacture of energy efficient computer hardware, and the State supports this initiative. The STO prefers that all products offered under the Contract be Energy Star compliant and bear the EPA Energy Star Logo.
- 3.07 Purchase Orders:** A Contractor shall not deliver or furnish products until the State transmits a purchase order. All purchase orders shall bear the Contract number and shall be deemed to incorporate by reference the Contract terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the State. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. The State reserves the right to revise this section in conjunction with implementation of an on-line procurement system.
- 3.08 Packaging:** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain State's property.
- 3.09 Manufacturer's Name and Approved Equivalents:** Unless otherwise specified, any manufacturers' names, trade names, brand names, information and/or catalog numbers listed in a specification are descriptive, not restrictive. With the State's prior approval, the Contractor may offer any product that meets or exceeds the applicable specifications.

The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The State shall determine in its sole discretion whether a product is acceptable as an equivalent.

- 3.10 **Inspection at Contractor's Site:** The State reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor or prospective Contractor (offeror) to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
- 3.11 **Safety Standards:** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
- 3.12 **Literature:** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- 3.13 **Transportation and Delivery:** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the State places an order. A Contractor, within five (5) days after receiving a purchase order, shall notify the State of any potential delivery delays. Evidence of inability to deliver or intentional delays shall be cause for Contract cancellation and Contractor suspension.
- 3.14 **Installation:** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the purchase order. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with the State and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left

clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

- 3.15 Inspection and Acceptance:** Inspection and acceptance shall be at destination unless otherwise provided. For Contractor-installed products, the date of acceptance is the date the STO accepts the product as installed and in good working order, as determined by any appropriate acceptance testing, and the State shall certify in writing to the Contractor when the product is accepted (if training or other post-installation services are included in the purchase order, the acceptance shall be conditional). For State-installed products, the date of acceptance shall be the delivery date. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the State shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damage to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When the State rejects a product, Contractor shall remove it from the premises within ten days after notification of rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the State shall have the right to dispose of it as its own property. Contractor shall reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

- 3.16 Title to Deliverables:** For purposes of this section, a "product" is any deliverable furnished under the Contract, including but not limited to (1) components of the hardware environment, (2) printed materials, (3) third-party software, (4) programs and programming modifications, customizations, tools, data, modules, and components, and (5) any tangible or intangible properties embedded therein. A product is "existing" if it is a tangible or intangible licensed product that exists before Contract work begins (the Contractor shall bear the burden of proving that a product existed before work began). A product is "custom" if it is any product, preliminary or final, that is created under the Contract for the State by the Contractor or its employees, subcontractors, or agents.

For existing hardware products, title to a hardware product shall pass to the State upon written acceptance. For existing software products, that are normally commercially distributed on a license basis by the Contractor or other independent software proprietary owner (ISPO), whether or not embedded in, delivered, or operating in conjunction with hardware or a custom product, title shall remain with the Contractor or ISPO. Effective upon acceptance, such product shall be licensed to the State in accordance with the Contractor or ISPO's standard licensed agreement, provided, however, that the license agreement shall, at a minimum, (1) grant the State a non-exclusive license to use, execute, reproduce, display, perform, adapt (unless the Contractor demonstrates to the State before execution of a purchase order that adaptation will violate existing agreements or law) and distribute the product to authorized users up to the license capacity identified in the purchase order with all license rights necessary to effect the State's stated purpose, and (2) recognize the State as the licensee. Where these rights are not otherwise covered by the ISPO's standard license agreement, the Contractor shall

obtain these rights at its sole expense. The State shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

For custom products, effective upon creation the Contractor hereby conveys to the State the sole and exclusive rights, title and interest in the product, including all trademark and copyrights, and the Contractor shall take all necessary and appropriate steps to ensure that the products are protected against unauthorized copying, reproduction, or marketing through the Contractor or its employees, subcontractors, or agents; provided, that the Contractor may otherwise use any related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under the Contract. In the alternative to taking exclusive ownership and title to such products, the State may elect, by providing written notice to the Contractor, to take a non-exclusive perpetual license to use, execute, reproduce, display, perform, and distribute the product as described in the preceding paragraph.

3.17 Software License Grant: Where product is acquired on a licensed basis, the following terms shall constitute the license grant.

- **Scope:** Licensee is granted a non-exclusive license to use, execute, reproduce, display, perform, or merge the product within its business enterprise in the United States up to the maximum licensed capacity identified on the purchase order. The product may be accessed, used, executed, reproduced, displayed, or performed up to the capacity measured by the applicable licensing unit identified on the purchase order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, etc.). Licensee shall have the right to use and distribute modifications and customizations of the product to and for use by anyone otherwise licensed to use the product, provided that any modifications, however extensive, shall not diminish licensor's proprietary title or interest. This paragraph grants no license, right, or interest in any trademark, trade name, or service mark.
- **Term:** The license term shall begin the date the product is accepted. Where a license involves licensee's right to copy a previously licensed and accepted master copy, the term shall begin the date the purchase order is executed.
- **Documentation:** Upon request, the Contractor shall deliver to the licensee at the Contractor's expense (1) one master electronic copy and one hard copy of product documentation or (2) one master electronic copy and hard copies of the product documentation by type of license in the following amounts, unless otherwise agreed: for individual/named user, one copy per licensee; for concurrent users, ten copies per site; for processing capacity, ten copies per site. The master electronic copy shall be in either CD-ROM or diskette format and usable without conversion (for example, if a unit has only a 3½" disk drive, software shall be provided on 3½" diskettes). The Contractor hereby grants the State a perpetual license right to make, reproduce (including downloading electronic copies), and distribute, either electronically or otherwise, copies of product documentation as necessary to enjoy full use of the product in accordance with the terms of the license.
- **Technical Support and Maintenance:** Licensee may elect the technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to the

Contractor any time during the Contract term. Maintenance shall include, at a minimum, (1) providing error corrections, patches, updates, revisions, fixes, upgrades, and new releases to licensee, and (2) Help Desk assistance accessible via toll-free or local telephone call or on-line. The Contractor shall maintain the products so as to provide licensee with the ability to use the products in accordance with the product documentation, without significant functional downtime to ongoing operations during the maintenance term. The State shall not be required to purchase maintenance for use of the product, and the State's license shall not be invalidated for refusal to purchase maintenance. The maintenance term(s) and any renewals are independent of the Contract term. The State may discontinue maintenance at the end of any current maintenance term upon notice to the Contractor; provided, the term shall not automatically renew. If the State does not initially acquire, or discontinues, maintenance, the State may at any later time reinstate maintenance without any penalties or other charges, by paying the Contractor the amount, if any, that would have been due under the Contract for the period that maintenance had lapsed, or for twelve months, whichever is less.

- Transfers: Licensee's operations may be altered, expanded, or diminished. Licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between agencies. Contractor approval is not required for such transfers, but licensee shall give prior written notice to the Contractor. There shall be no additional license or other transfer fees due, provided that (1) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS) or (2) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system to restrict use and access to the product to that unit of licensed capacity solely dedicated to beneficial use for licensee. If the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due the Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.
- Restricted Use by Third Parties: Outsourcers, facilities management, service bureaus, or other services retained by licensee shall have the right to use the product to maintain licensee's operations, including data processing, provided that (1) licensee gives notice to the Contractor of such third party, site of intended use of the product, and means of access, (2) the third party has executed, or agrees to execute, the product manufacturer's standard nondisclosure or restricted use agreement, which agreement shall be accepted by the Contractor, and (3) the third party shall maintain a logical or physical partition within its computer system to restrict access to the program to that portion solely dedicated to beneficial use for licensee. Licensee shall not be liable for any third party's compliance or noncompliance with the terms of the nondisclosure agreement, nor shall the nondisclosure agreement create or impose any liabilities on the State or the licensee. Any third party with whom a licensee has a relationship for a State function or business activity shall have the temporary right to use product (e.g., Java applets), provided that

such use shall be limited to the period during which the third party is using the product for the function or activity.

- Archival Backup: Licensee may use and copy the product and related documentation in connection with reproducing a reasonable number of copies for archival backup and disaster recovery procedures.
- Source Code Escrow: If either the product manufacturer/developer or the Contractor offers source code or source code escrow to any other commercial customer, or if either entity seeks bankruptcy protection, then the Contractor shall either (1) provide licensee with source code for the product, (2) place the source code in a third-party escrow arrangement with a designated escrow agent, which shall be identified to the State, and which shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the State, or (3) certify to the State that the product manufacturer/developer has named the State, acting by and through the State, and the licensee, as named beneficiaries of an established escrow arrangement with its designated escrow agent, which shall be identified to the State and licensee, and which shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements, shall be updated for each new release of the product in the same manner as provided above and such updated shall be certified in writing to the State. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph. The State may release the source code to licensees under the Contract which have licensed product or obtained services, and which may use the copy of the source code to maintain the product.
- Confidentiality: The product is a trade secret, copyrighted and propriety product. Licensee and its employees shall not disclose or otherwise distribute or reproduce any product to anyone other than as authorized under the Contract. Licensee shall not remove or destroy any of the Contractor's proprietary markings.
- Restricted Use: Except as expressly authorized by the terms of license, licensee shall not: copy the product; cause or permit reverse compilation or reverse assembly of the product or any portion; or export the product in violation of any U.S. Department of Commerce export administration regulations.
- Proof of License: The Contractor shall provide to each licensee that places a purchase order either (1) the product developer's certified license confirmation certificates in the name of the licensee or (2) a written confirmation from the proprietary owner accepting the product invoice as a proof of license. The Contractor shall submit a sample certificate, or alternative confirmation, which shall be in a form acceptable to the licensee.
- Audit of Licensed Usage: The Contractor may periodically audit, no more than annually and at its expense, use of licensed product at any site where a copy resides provided that (1) the Contractor gives licensee at least thirty days written advance notice, (2) the audit is conducted during the licensee's normal business hours, (3) the audit is conducted by a State Inspector General's office or by an independent auditor chosen by mutual

agreement of the licensee and Contractor as follows: the Contractor shall recommend a minimum of three auditing/accounting firms, from which the licensee shall select one; in no case shall the Business Software Alliance, Software Publishers Association, or Federation Against Software Theft be recommended by the Contractor or used, directly or indirectly, to conduct audits, (4) the Contractor and licensee shall designate a representative who shall be entitled to participate, who shall mutually agree on audit format, and who shall be entitled to copies of all reports, data, or information obtained from the audit, and (5) if the audit shows that the licensee was not in compliance, the licensee shall purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the Contract price then in effect or, if none, then at the Contractor's U.S. commercial list price. Once such additional licenses and capacities are purchased, licensee shall be deemed to have been in compliance retroactively, and licensee shall have no further liability of any kind for the unauthorized use of the product.

- **Bankruptcy:** The Contract is subject to the terms of section 365(n) of the United States Bankruptcy Code ("Code") if the licensor files a bankruptcy petition. Licensor's failure to perform its continuing obligations shall constitute a material breach of the Contract excusing performance by the licensee. Royalty payments for use of intellectual property shall be separate from and independent of payments for performance of all other obligations under the Contract (e.g., continuing development obligations, maintenance and support obligations, obligations to provide updates, indemnity obligations, etc.). Upon request, the licensor shall furnish licensee any intellectual property, as defined in the Code, and any embodiment of that intellectual property held by the licensor. If licensee must hire third-parties to perform support, maintenance, or development tasks previously performed by licensor, the licensee may provide intellectual property to such third-parties without violating non-disclosure or exclusivity provisions.
- 3.18 **Invoicing and Payment:** Invoices shall contain the Contract number, purchase order number, and the Contractor's SPURS vendor number. Invoices for per diem and travel expenses shall comply with section 112.061 of the Florida Statutes. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract. At the State's option, Contractors may be required to invoice electronically pursuant to State guidelines. Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Time limits do not begin until the Contractor submits a properly completed invoice. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State agencies.
- 3.19 **Taxes:** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages.
- 3.20 **Annual Appropriations:** The State's performance and obligation to pay under the Contract are contingent upon an annual appropriation by the Legislature. The DOE will fund this project through annual state appropriations and other E-rate federal funding.

Continuation of funding is subject to federal approval. The DOE will know no later than October 1 of each year whether sufficient funds are available to cover the required activities for that year. In the event that they are not, the contract will be canceled or amended as appropriate.

- 3.21 Governmental Restrictions:** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the State in writing, indicating the specific restriction. The State reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the State.
- 3.22 Compliance with Laws:** The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, the Contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination.
- 3.23 Lobbying and Integrity:** Pursuant to section 216.347 of the Florida Statutes, the Contractor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, the Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the State's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dlis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including

overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

- 3.24 Indemnification:** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State. Further, the Contractor shall fully indemnify, defend, and hold harmless the State from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided that the State shall give the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State in an infringement action without the Contractor's prior written consent, which shall not be unreasonably withheld. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the State the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the State the right to continue using the product, the Contractor shall remove the product and refund the State the amounts paid in excess of a reasonable rental for past use. The State shall not be liable for any royalties. Except as specified in the foregoing portions of this section, for all other claims against the Contractor under any individual purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a purchase order for direct damages shall be the greater of \$100,000, the dollar amount of the purchase order, or two times the charges rendered by the Contractor under the purchase order. Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, consequential or punitive damages, including lost data or records (unless the purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State may, in addition to other remedies available to it at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.
- 3.25 Suspension of Work:** The State may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interests of the State to do so. The State

shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the State shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract. Suspension of work shall not entitle the Contractor to any additional compensation.

- 3.26 Termination for Convenience:** The State, by written notice to the Contractor, may terminate the Contract in whole or in part when the State determines in its sole discretion that it is in the State's interest to do so, without penalty or recourse by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The Contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the STO pursuant to the Contract prior to the effective date of termination. Contractor shall not furnish any goods or perform any services after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- 3.27 Termination for Cause:** The State may terminate the Contract if the Contractor fails to (1) deliver the supplies or perform the services within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), Florida Administrative Code, governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted services or supplies were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under the Contract.
- 3.28 Force Majeure, Notice of Delay, and No Damages for Delay:** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor

shall notify the State in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the STO. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the STO for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the State determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State, in which case the State may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the State with respect to products subjected to allocation, and/or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

- 3.29 **Equitable Adjustment:** The State may, in its sole discretion, make an equitable adjustment in the Contract terms and/or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.
- 3.30 **Scope Changes:** The State may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The State may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the State may solicit separate bids to satisfy them.
- 3.31 **Renewal:** Subject to Chapter 287 of the Florida Statutes, and upon mutual agreement, the State and the Contractor may renew the Contract, in whole or in part. Any renewal terms shall be specified in the original contract.
- 3.32 **Advertising:** The Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the State, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the

State or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the State in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized subcontractors, distributors, dealers, resellers, or service representatives.

- 3.33 **Assignment:** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the State; provided, the Contractor assigns to the State any and all claims it has with respect to the Contract under the antitrust laws of the United States and the State. The State may assign the Contract with prior written notice to Contractor of its intent to do so.

The STO shall deal through only one contractor, which shall retain the legal responsibility for performing all contractor obligations.

- 3.34 **Dispute Resolution:** Any dispute concerning performance of the Contract shall be decided by the Purchasing Director, who shall reduce the decision to writing and serve a copy on the Contractor. The decision of the Purchasing Director shall be final and conclusive unless within ten (10) days from the date of receipt, the Contractor files with the State a petition for administrative hearing. The State's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply, the Contractor waives any right to jury trial that it may have, and the prevailing party shall be awarded reasonable costs incurred, including attorneys' fees and costs on appeal.

- 3.35 **Employees, Subcontractors, and Agents:** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the State. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an agency's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

- 3.36 **Security and Confidentiality:** The Contractor shall comply fully with all security procedures of the State in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations

- 3.41 **Warranty of Ability to Perform:** The Contractor shall provide the State, no later than the time the Contractor returns a signed copy of the Contract, with proof of a Certificate of Status from the Secretary of State, Division of Corporations, demonstrating that the Contractor is in good standing and legally authorized to transact business in Florida. Failure to submit this documentation shall be sufficient grounds for withholding payment under the Contract and cause for termination. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the State in writing if its ability to perform is compromised in any manner during the term of the Contract.
- 3.42 **Year 2000 Compliance Warranty:** All products furnished under the Contract shall be Year 2000 compliant, that is, able to accurately process date data from, into, and between the twentieth and twenty-first centuries, including leap year calculations. Resellers may provide a "pass through warranty" from the manufacturer/software developer, which meets all the warranty requirements specified by the State, and which shall include all other warranties provided by the manufacturer or software developer. Reseller shall be responsible for warranty assurance, assistance, enforcement and any other actions or remediation, required to satisfy warranty requirements.
- 3.43 **Warranty of No Hardstop/Passive License Monitoring:** Unless the State is specifically and conspicuously advised to the contrary in writing at the time of order and before product acceptance, the Contractor hereby warrants and represents that the product and upgrades do not and will not contain any computer code that would disable the product or upgrades or impair in any way operation based on the elapsing of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes called "time bombs," "time locks," or "drop dead" devices) or that would permit the Contractor to access the product to cause such disablement or impairment (sometimes called a "trap door" device). The Contractor agrees that upon an alleged breach of this provision, the State shall not have an adequate remedy at law, including monetary damages, and that the State shall be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any other remedies to which the State shall be entitled.
- 3.44 **Notice:** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery. Notices to the State shall be delivered to the Purchasing Director identified in the Instructions to Offerors. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.
- 3.45 **Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE):** To the extent that a product is certified by or is available from PRIDE, and has been approved in

accordance with section 946.515(2) of the Florida Statutes, it is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned. This provision is required by section 946.515(6) of the Florida Statutes; additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

- 3.46 **Modification of Terms:** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions under the Contract. The Contract may only be modified or amended upon mutual written agreement of the State and the Contractor. No oral agreements or representations shall be valid or binding upon the State or the Contractor. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The State's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.
- 3.47 **Waiver:** The delay or failure by the STO to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the STO's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 3.48 **Execution in Counterparts:** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 3.49 **Severability:** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.
- 3.50 **Inspection Audit and Maintenance of Reports:** Representative of the STO, the Comptroller of the State of Florida, or the Auditor General of the State of Florida, or their duly authorized representatives, shall have access, for purposes of examinations and recovery, to any books, documents, papers, and records of the contractor as they may relate to this contract. The contractor shall maintain books, records and documents in accordance with acceptable accounting principles and practices that sufficiently and properly reflect charges made. The State Technology Office may unilaterally cancel any resultant contract for refusal by the Contractor to allow public access to all documents, papers, letters, or other material originated or received by the Contractor in conjunction with this contract subject to the provisions of Florida Statutes, Chapter 119.

Technical Specifications

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2.01 Definitions: As used herein, the following definitions apply:

“E-rate” for meaning see the E-rate website [HTTP://www.sl.universalservice.org/overview/](http://www.sl.universalservice.org/overview/)

“FIRN” means the Florida Information Resource Network

“ITN” means an Invitation to Negotiate

2.02 Intent: It is the intent of this Invitation to Negotiate (ITN) to obtain a certified telecommunications service provider which meets the requirements for e-rate funding for Department of Education Florida Information Resource Network (FIRN) bundled Internet access for all public e-rate eligible facilities.

2.03 Background: The Florida Department of Education (DOE) provides an educational network for Internet access and data reporting services to the Florida educational community, which includes post-secondary, K-12 schools and libraries through the Florida Information Resource Network (FIRN). For the past fifteen years DOE, under educational specific appropriations, has supported the above operations. The tremendous growth of the Internet has escalated bandwidth demands from Florida schools and increased management and operational costs. In order to support the Internet needs of Florida schools it is necessary to outsource these services to maximize quality of services and future growth. Through the outsourcing of FIRN, DOE will be able to add additional E-rate funding to meet the bandwidth demands through outsourcing of this service.

Presently DOE owns the equipment and is the responsible party for telecommunications circuits that define the network. Currently there are 21 full-time and 6 part-time

employees that support the Network Operations Center, billing and the help desk of FIRN.

The current FIRN network is composed of 5 Internet gateway routers located in Miami, Orlando, Pensacola, Tampa and Tallahassee. There are 10 distribution routers located in Daytona Beach, Ft. Myers, Gainesville, Jacksonville, Miami, Orlando, Panama City, Pensacola, Tampa and Tallahassee. All of the gateway and distribution routers are connected using ATM connections from the State of Florida. Approximately 150 end nodes are connected to this infrastructure using dedicated circuits, frame relay and ATM connections.

Content Filtering and caching servers are located at each gateway node. The content filtering being offered to FIRN customers is under a previously negotiated Contract. There are approximately 50 dial-up hubs supporting 1,183 dial-up lines scattered throughout the State providing daily Internet connectivity to teachers and students around the State. A Network Operations Center is located in Tallahassee where the network is presently being monitored. Additional servers are located in the DOE providing common services to the end users.

- 2.04 Purpose: The purpose of this Invitation to Negotiate is to seek replies that address DOE's need to outsource Internet and related telecommunication service (i.e. direct connection, local dial-up connections, and 800 dial-up connections to the Internet) for all of the public e-rate eligible sites in the State of Florida. DOE is seeking a state-of-the-art, cost-effective solution to keep pace with the growing need of telecommunication and web services for all Florida's public e-rate eligible sites (schools, libraries,...).

This Contract length will be through June 30, 2005. The STO has the option to renew the Contract for two (2) additional one (1) year increments.

DOE envisions a multi-phase project implementation. The initial transition phase will conclude on June 30, 2003 and consist of the following:

- Migrate to the new services and retire existing equipment and circuits; and transfer of FIRN network related staff to outsource provider;
- Maintaining existing level of service during transfer including but not limited to agreed upon Service Level Agreements; and
- Increasing the level of customer satisfaction on all Internet access during transition period.

The second phase to include the following:

- Provide an ongoing design review to ensure and enhance the quality of service to the STO and DOE customers.
- Improve the quality of services addressing any problem areas.

2.05 General Requirements: The offeror shall:

- Provide bundled Internet access (i.e. direct connections from school districts, local dial-up connectivity and 800 number dial-up connectivity), for 71 DOE defined school districts. Additionally, provide Internet access only for other public e-rate eligible sites;
- Provide Internet access pricing for community colleges, universities and other sites currently severed by FIRN;
- Provide IP address management and deployment which includes assisting DOE in obtaining additional State owned IP addresses as needed;
- Provide DNS for FIRN Network Address pools and FIRN customers relying on FIRN Name Servers;
- Provide written reports on utilization, network traffic capacity and performance tuning, service usage (broken down by institution and protocol) and other network utilization as needed by the DOE for reporting to the legislature;
- Provide written monthly reports, including agreed upon metrics, that verify or indicate network service levels are being met;
- Provide real-time web access to monthly reports of all trouble ticket activity involving customer support;
- Provide E-mail services for students and educators. E-mail must be filtered in accordance with Child Internet Protection Act (CIPA) guidelines;
- The desired robust services design includes meshed routing (links) to provide alternate physical paths to the Internet.
- Provide connectivity such that between any two sites under Contract, the maximum latency for a 1,400 Byte Internet Control Message Protocol (ICMP) echo (ping) packet is no more than 30 ms, typically measured during the business day;
- Provide sufficient bandwidth on any aggregation or meshed/alternate pathway circuits (that is, not the last mile local loop circuits) to ensure that over any two successive 5 minute polling intervals, the utilization of the links are at less than 80% of capacity;
- Provide sufficient bandwidth at Internet gateway sites to ensure that over any two successive 5 minute polling intervals, the utilization of the links are at less than 80% of capacity;
- The offeror must outline their ability to provide robust communication services (for example showing why their infrastructure design would be considered resilient);
- Capacity increases must be completed within 90 days of State Technology Office request;
- To ensure a high standard of service, the STO requires real-time view into all network components between all sites covered by this Contract;
- State Technology Office is in the process of developing a statewide enterprise initiative. The Contractor shall integrate its bundled Internet access services into the State's enterprise network. Some of the relevant elements of the State's enterprise network are listed in Attachment V. (Attachment V is for informational purposes only, and shall not become a contract document).
- All invoices are to be delivered to the STO electronically in machine readable format compatible with the STO's systems;

- Provide management and end user support for all Internet access including local dial-up and 800 dial-up services; and,
- Provide security against hackers, viruses and other threats for all e-mail databases, etc.

2.06 Support Requirements: The Offeror shall:

- Manage and assume responsibility for the previously purchased existing content filtering solution (currently under a three year Contract) as required under E-rate funding. This includes working with each customer of FIRN to ensure seamless filtering;
- Provide a 24/7/365 Network Operations Center for customer assistance on service issues with dedicated staff;
- Provide for 2-hour response time to any trouble on all services;
- Provide 16/7/365 help-desk support (i.e. users of e-mail and dial-ups) for FIRN customers with dedicated staff;
- Provide voice and web communications for general information to customers on network maintenance;
- Develop a process and procedure for network maintenance and customer support in collaboration with the STO/DOE. The resulting procedure will be disseminated to FIRN customers through workshops in the state.
- Provide customer interaction through a customer service representative. Integrated Voice Recognition IVR and other machine interaction are not desirable for our customer base; and
- Interact with customers to provide advanced services i.e. support to individual district network managers for troubleshooting district area network interchanges with the performance of the bundled Internet access.
- All bundled Internet services shall be upgraded as needed and maintained at a projected level higher than presently being provided by FIRN. All future configurations must be kept in line with e-rate eligibility standards for all services through a coordinated process with STO and DOE.

2.07 Service: The Contractor will respond to all services troubles within 2 hours of the occurrence. Response shall be defined as trouble isolation with communication back to the State Technology Office and appropriate dispatch as required. Service restoration is expected in all cases within 4 hours. The Contractor will provide to the STO a real-time view into the companies trouble ticket system and into the providers event notification system for verification of troubles.

2.08 Liquidated Damages: The STO envisions that the Contractor agrees that the following will serve as liquidated damages for failure to provide timely services management and support:

- A monthly report will be provided to the STO on all trouble activity on the procured services. For any outages not reacted to within the 2-hour and 4-hour time frame defined

in 5.3 above, the Contractor agrees to pay the STO. 20% of the monthly charges associated with the site of the trouble as liquidated damages and not as a penalty.

- For any outages lasting for more than 12 hours the Contractor agrees to pay 30% of the monthly charges associated with the site of the trouble as liquidated damages and not as a penalty.
- For any outages lasting for more than 24 hours the Contractor agrees to pay 50% of the monthly charges associated with the site of the trouble as liquidated damages and not as a penalty.
- The STO does not expect the Contractor to pay more than 100% of the monthly charge for multiple outages within the same billing period as liquidated damages. It is the intent of the State Technology Office to obtain robust bundled Internet access for the DOE. While this document contains liquidated damages, it should be understood that recurring service problems (trouble reports for similar issues) can result in the provider being held in default.

2.09 Performance Measurement: To ensure that the customer satisfaction rate is 98% or better, DOE shall perform periodic random samplings of the customers of FIRN through a web survey. The Contractor shall support this effort with any documentation needed for the survey as well as web support to accomplish the survey.

2.10 Performance Bond: The Contractor shall, at the time of entering into the Contract with the STO, furnish a performance bond in the amount of one million dollars (\$1,000,000.00). The surety shall be in a form acceptable to the STO, such as a bond, cashier's check, certified check or money order. Individual sureties are not acceptable.

If a bond is submitted, the attorney-in-fact that executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney. The bond must be written by a surety with a Best Rating no less than a B+ or higher and must be authorized and licensed to do business in the State of Florida.

The selected Contractor shall be responsible for all premiums charged by surety. The performance bond shall remain in full effect during the term of the Contract award.

2.11 Change Management: Where the Contractor must obtain the STO's approval of an activity or product before the Contractor can complete a critical activity, the Contractor shall be responsible for providing a reasonable time for the STO to complete its review and for the Contractor to correct any deficiencies. The parties' contract managers shall agree, in writing, in advance, as to the reasonable time for the STO's review of a specific activity or product.

Any required system development, revision or conversion effort will be performed in accordance with predetermined and uniformly applied work plans, which require the periodic review and approval of the STO. In the event that the Contractor is notified of specific deficiencies, which prevent acceptance of work completed, required changes will be determined in accordance with the following guidelines:

- The STO shall bear all costs of modifications necessitated by STO revision of system requirements, as requested by the STO in writing, but only to the extent such costs represent additional Contractor effort, as determined by the STO.
- The Contractor alone shall bear all costs of modifications necessitated by Contractor's failure to satisfy requirements defined in the response.

The Contract will establish more precise details governing change management.